

REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. The foregoing amendments are fully supported at least by the original claims and paragraph [0028] of the specification. No new matter is entered.

Amendments

Claims 1 and 6 are amended. Claim 3 is canceled.

Rejection under 35 U.S.C. § 112, first paragraph

In the Office Action, beginning at page 4, Claims 1-4 and 6 were rejected under 35 U.S.C. § 112, first paragraph, as reciting subject matters that allegedly contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, has possession of the claimed invention. Applicant respectfully requests reconsideration of this rejection.

In response, the complete address of the depository has been added to the specification at paragraph [0097].

Additionally, the below-named representative attorney is authorized by the Applicant to certify that the deposits meet the criteria set forth in 37 C.F.R. §§1.801-1.809. It is confirmed that:

- (A) During the pendency of this application, access to the invention will be afforded to the Commissioner upon request;
- (B) All restrictions upon availability to the public will be irrevocably removed upon granting of the patent;
- (C) The deposits will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the effective life of the patent, whichever

is longer;

(D) The deposits were viable at the time of deposit; and

(E) The deposits will be replaced if they should become non-viable.

Furthermore, evidence of the deposits has been provided herewith with the attachment of the forms “ Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure” .

For at least the foregoing reasons, Applicant respectfully submits that Claims 1-4 and 6 fully comply with 35 U.S.C. § 112, first paragraph, and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 112.

Rejection under 35 U.S.C. § 112, second paragraph

In the Office Action, beginning at page 6, Claims 1-4 and 6 were rejected under 35 U.S.C. § 112, second paragraph, as reciting subject matters that allegedly are indefinite. Applicant respectfully requests reconsideration of this rejection.

Claims 1 and 6 have been amended to recite the phrase “as compared to a wild-type bacterium”. Although it was believed the claims were definite without this amendment, clearly the claims now particularly point out and distinctly claim the invention. This amendment is supported by paragraph [0028] of the specification.

For at least the foregoing reasons, Applicant respectfully submits that Claims 1-4 and 6 fully comply with 35 U.S.C. § 112, second paragraph, and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 112.

Rejection under 35 U.S.C. § 102

In the Office Action, beginning at page 7, Claims 1-2, 4 and 6 were rejected under 35 U.S.C. § 102, as reciting subject matters that allegedly are anticipated by EP Patent No. 188 822. Applicant respectfully requests reconsideration of this rejection.

In response to this rejection, Claim 3 has been cancelled and its subject matter has

been incorporated into amended Claims 1 and 6. As claim 3 was not included in this rejection, the claims clearly define over the prior art.

For at least the foregoing reasons, Applicant respectfully submits that the subject matters of Claims 1-2, 4 and 6 are not anticipated by EP 188 822, are therefore not unpatentable under 35 U.S.C. § 102, and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 102.

Conclusion

For at least the foregoing reasons, Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of the present patent application is therefore respectfully solicited.

If Examiner Robinson believes that a telephone conference with the undersigned would expedite passage of the present patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the undersigned authorizes the charging of any necessary fees to our deposit account 50-2821.

Respectfully submitted,

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